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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEXANDER CARVALHO, ERIC CARTER, SERGIO
CASTILLO, DANIEL GREENSPAN, AUSTIN
GUEST, THOMAS HINTZE, JOSEPH SHARKEY,
EASTON SMITH, JENNIFER WALLER,

6

PLAINTIFFS,

7

-against-

Index No:
13 CV 4174

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THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT ("NYPD") OFFICERS
FIRST NAME UNKNOWN ("FNU") LI, FNU
AHMED, FNU ABDEL-RAHIM, FNU RODRIGUEZ,
and JOHN and JANE DOE #1 - 15 (The names
being fictitious, as the true names and
shield numbers are not presently known),
in their individual and official
capacities,

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DEFENDANTS.

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DATE: October 8, 2014

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TIME: 2:25 p.m.

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EXAMINATION BEFORE TRIAL of the
Defendant, NEW YORK CITY POLICE DEPARTMENT,
by MICHAEL GALGANO, taken by the
Plaintiffs, pursuant to a Notice, held at
the offices of Corporation Counsel, 100
Church Street, New York, New York 10007,
before Marleine Lamey, a Notary Public of
the State of New York.

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A P P E A R A N C E S:

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KUNSTLER LAW

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Attorney for the Plaintiffs
ALEXANDER CARVALHO, ERIC CARTER, SERGIO
CASTILLO, DANIEL GREENSPAN, AUSTIN GUEST,
THOMAS HINTZE, JOSEPH SHARKEY, EASTON
SMITH, JENNIFER WALLER

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42 Broadway
New York, New York 10004

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BY: REBECCA M. HEINEGG, ESQ.
E-Mail: Rebecca@kunstlerlaw.net

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ZACHARY CARTER, ESQ.
Corporation Counsel

1 M. GALGANO

2 A. No.

3 Q. Are you represented by counsel today?

4 A. Yes.

5 Q. Is that your counsel sitting to your
6 left?

7 A. Yes.

8 Q. Have you ever been deposed before?

9 A. No.

10 Q. Is there any reason that you cannot
11 testify fully and accurately today?

12 A. No.

13 Q. Do you have any physical or mental
14 condition that might keep you from testifying
15 fully or accurately today?

16 A. No.

17 Q. Have you taken any sort of medication
18 today that may interfere with your ability to
19 testify fully and accurately today?

20 A. No.

21 Q. Is there any medication that you were
22 supposed to have taken but you did not that may
23 interfere with your ability to testify fully and
24 accurately today?

25 A. No.

0007

1 M. GALGANO

2 Q. Do you understand that you have taken
3 an oath to tell the truth?

4 A. Yes.

5 Q. Do you understand even though we're
6 here in a conference room it's, essentially, the
7 same as an oath you would take in court?

8 A. Yes.

9 Q. Now, if you don't hear any of my
10 questions, please let me know. If you don't
11 understand any of my questions, please let me
12 know. Will you do that?

13 A. Yes.

14 Q. If you give an answer and at any point
15 you need to revisit it or modify it, just let me
16 know and we can go back and do that, I just need
17 you to answer verbally.

18 A. Yes.

19 Q. Did you review any documents to
20 prepare for your deposition today?

21 A. Yes.

22 Q. What did you review?

23 A. The copy of my memo book.

24 Q. Is that what is in front of you marked
25 as Plaintiff's Exhibit 21?

0008

1 M. GALGANO

2 A. Yes.

3 Q. Have you looked through all pages of
4 Plaintiff's Exhibit 21?

5 MS. WILSON: Let the record reflect
6 that Plaintiff's Exhibit 21 is a document
7 that is Bates stamped D319 to I believe
8 it's 325.

9 A. Everything is there.

10 Q. All of that is your memo book?

11 A. Yes.

12 Q. All of Plaintiff's Exhibit 21 is in
13 your writing?

14 A. Yes.

15 Q. Did you review any other documents in
16 preparation for your deposition today?

17 A. No.

18 Q. Did you review any photographs or
19 videos in preparation for your deposition today?

20 A. No.

21 Q. When you reviewed this memo book, did
22 it refresh your recollection?

23 A. Yes.

24 Q. How so?

25 A. Dates, times, that is about it.

0009

1 M. GALGANO

2 Q. Without telling me what you discussed
3 did you meet with your attorney in preparation
4 for your deposition?

5 A. Yes.

6 Q. How many times?

7 A. Twice.

8 Q. What attorneys did you meet with?

9 A. (Indicating) Ms. Wilson.

10 Q. Did you meet with any other attorneys?

11 A. Yes.

12 Q. What other attorneys did you meet
13 with?

14 MS. WILSON: Let the record reflect
15 he is motioning to Ms. Carson.

16 A. There we go, thank you.

17 Q. Did you meet with both attorneys both
18 times?

19 A. Yes.

20 Q. For how long each time?

21 A. Yesterday, the 7th, was about maybe
22 two hours and then this morning for about a half
23 hour.

24 Q. What tour are you working today?

25 A. 09 by 5:30.

0010

1 M. GALGANO

2 Q. What is the last tour you worked?

3 A. 09 by 5:30 yesterday.

4 Q. When were you appointed to the NYPD?

0030

1 M. GALGANO

2 after you arrived at Zuccotti Park?

3 A. No.

4 Q. Did any of the officers in Zuccotti
5 Park speak to you?

6 A. No.

7 Q. So, you did not speak to anybody the
8 whole night?

9 A. Not the whole night, no.

10 Q. When was the first time that you spoke
11 to somebody after arriving at Zuccotti Park?

12 A. It was late in the evening and we were
13 told we were getting -- the task force was being
14 deployed to the outside of the park.

15 Q. This was after you had already
16 arrived?

17 A. It was quite some time after.

18 Q. So, sometime after you had arrived in
19 the park you were told that the task force was
20 being deployed to one side of the park?

21 A. Yes.

22 Q. Who told you this?

23 A. Viviani.

24 Q. He told you this directly?

25 A. Yes.

0031

1 M. GALGANO

2 Q. What did he tell you to do?

3 A. We were going to line up on Liberty
4 Street side and stand by.

5 Q. So, your instructions were to go to
6 Liberty Street and stand by?

7 A. Yes.

8 Q. So, that is what you did?

9 A. Yes.

10 Q. Approximately how many officers went
11 with you?

12 A. I don't know.

13 Q. Was it more than 10?

14 A. Yes.

15 Q. Was it more than 20?

16 A. At that point I would say yes.

17 Q. Was it more than 30?

18 A. I really didn't keep count.

19 Q. Was there more than 20 officers with
20 you standing by on Liberty Street?

21 A. Yes.

22 Q. How long were you standing by on
23 Liberty Street?

24 A. I couldn't really tell. It was a
25 little while.

0032

1 M. GALGANO

2 Q. More than an hour?

3 A. About an hour.

4 Q. Do you have any idea what time of
5 night this was?

6 A. No.

7 Q. It was at night though?

8 A. Yes.

9 Q. So, I am sorry, you said you were
10 there about an hour?

11 A. About an hour, yes.

12 Q. After about an hour what happened
13 next?

14 A. We were told that we were going to be
15 redeployed to the Broadway side.

16 Q. Who told you this?

17 A. That came from Lieutenant Viviano.

18 Q. He told you this directly?

19 A. Yes.

20 Q. What did you do after that?

21 A. Relocated to the Broadway side.

22 Q. Did all of the officers who had been
23 with you on Liberty also relocate to the
24 Broadway side?

25 A. Yes.

0033

1 M. GALGANO

2 Q. After you relocated to the Broadway
3 side you were still standing by?

4 A. Yes.

5 Q. What did you observe when you were
6 standing by on the Broadway side?

7 MS. WILSON: Objection to form.

8 A. The same large crowd that was still
9 inside the park.

10 Q. It's your testimony that you did not
11 recognize any of those people, right?

12 A. No.

13 Q. No, you did not recognize?

14 A. No, I did not recognize anybody inside
15 the park.

16 Q. How long did you stand by on the
17 Broadway side?

18 A. Maybe another hour.

19 Q. Did you speak to any other officers
20 while you were standing by?

21 A. No.

22 Q. Did any of the officers speak to you?

23 A. No.

24 Q. Did any of the other people in the
25 park who were not police speak to you?

0034

1 M. GALGANO

2 A. No.

3 Q. Did you speak to anybody in the park?

4 A. No.

5 Q. After you stood by for about an hour

6 what was the next thing that you did?

7 A. The next thing we were told by

8 Lieutenant Viviano to form lines and that the

9 standby -- they were going to read warnings that

10 they were preparing to close the park.

11 Q. Did Lieutenant Viviani tell you why

12 they were closing the park?

13 A. No.

14 Q. Did anybody tell you why they were

15 closing the park?

16 A. No.

17 Q. So, were you told to form a line?

18 A. Yes.

19 Q. Then you formed the line?

20 A. Yes.

21 Q. What was the next thing that you

22 observed happening?

23 MS. WILSON: Objection to form.

24 You can answer.

25 A. A representative from Brookfield

0042

1 M. GALGANO

2 you received?

3 A. We were going to begin -- the NYPD was
4 going to begin to clear out the park.

5 Q. When did you receive those
6 instructions?

7 A. I am not sure of the approximate time.

8 Q. Approximately how long after
9 Lieutenant Viviano read those warnings were you
10 instructed to start clearing out the park?

11 A. Maybe 20 minutes.

12 Q. Who gave these instructions?

13 A. That the park was going to be cleared
14 out by the NYPD was Viviani.

15 Q. Did you hear him give these
16 instructions?

17 A. Yes.

18 Q. Do you remember exactly what he said?

19 A. Words to the effect we were going to
20 begin to clear out the park.

21 Q. Did he say anything else?

22 A. No.

23 Q. What did you do next?

24 A. We moved forward in a line and began
25 to clear out the park.

0043

1 M. GALGANO

2 Q. How did you clear out the park?

3 A. We moved through the crowd instructing
4 people to exit to either side of the park.

5 Q. How many people did you instruct to
6 leave the park?

7 A. I don't know. I didn't count.

8 Q. What did you say?

9 A. Please leave the park, it's time to
10 go, it's being closed.

11 Q. Did there come a time when you made
12 arrests?

13 A. No.

14 Q. You did not make any arrests?

15 A. No.

16 Q. Did there come a time when there were
17 orders given to make arrests?

18 A. Yes.

19 Q. When was that?

20 A. After we had cleared through the park
21 we re-formed back up and the order was given
22 that arrests were going to be made.

23 Q. Who gave that order?

24 A. Inspector Winski.

25 Q. When you say you re-formed back up,

0044

1 M. GALGANO

2 where did you re- form?

3 A. Broadway side.

4 Q. So, it's your testimony that you went
5 through the park and then you went back to where
6 you had started?

7 A. Yes.

8 Q. At that time Deputy Inspector Winski
9 ordered you to make arrests?

10 MS. WILSON: Objection to form.

11 A. He ordered members of the NYPD to make
12 arrests.

13 Q. Did he order specific members of the
14 NYPD to make arrests?

15 A. I believe he did.

16 Q. Why do you believe that?

17 A. There were officers who did make
18 arrests.

19 Q. But you personally did not make any
20 arrests?

21 A. No.

22 Q. Why did you not make arrests?

23 MS. WILSON: Objection to form.

24 A. Manhattan South Task Force wasn't
25 being used at that moment.

0045

1 M. GALGANO

2 Q. So, when you say Deputy Inspector
3 Winski gave instructions to arrest people in the
4 park, he was not giving those instructions to
5 Manhattan South Task Force?

6 A. No.

7 Q. How do you know that?

8 A. Manhattan South Task Force was told to
9 remain on the Broadway side.

10 Q. Who told you to remain on the Broadway
11 side?

12 A. Winski.

13 Q. So, who did Deputy Inspector Winski
14 instruct to make arrests?

15 A. Other officers that were assigned to
16 the park they were using them.

17 Q. So, he instructed officers not part of
18 Manhattan South Task Force to make arrests and
19 he instructed you and the rest of Manhattan
20 South Task Force to remain on the Broadway side
21 of the park?

22 MS. WILSON: Objection to form.

23 A. Yes.

24 Q. Did you handcuff anybody that night?

25 A. No.

0046

1 M. GALGANO

2 Q. Were you assigned any arrestees that
3 night?

4 A. Yes.

5 Q. Who were you assigned?

6 A. There were five arrests that were
7 assigned to me.

8 Q. Who were those arrests?

9 A. I can't recall without refreshing my
10 memory by looking at my memo book, I couldn't
11 recall the names.

12 Q. Would looking at your memo book
13 refresh your recollection?

14 A. Yes.

15 Q. I am handing you what was premarked as
16 Plaintiff's Exhibit 21?

17 A. Yes. We have one male by the name of
18 Joseph Sharkey.

19 Q. When was the first time that you saw
20 Mr. Sharkey?

21 A. On a New York City MTA bus.

22 Q. On a bus?

23 A. Yes.

24 Q. Was he handcuffed at that time?

25 A. Yes.

0047

1 M. GALGANO

2 Q. Was he under arrest at that time?

3 A. Yes.

4 Q. Who were the other four persons that
5 you were assigned to? Were you assigned to
6 arrest them? What exactly was your assignment?

7 A. When everything had calmed down and
8 some order was restored, Lieutenant Viviano came
9 over and said there was some kind of a mixup and
10 we had a New York City MTA bus that the NYPD was
11 using to hold prisoners, prisoners without
12 arresting officers, and that Manhattan South
13 Task Force would be assigned those arrests.

14 Q. When you say he said there was some
15 kind of a mixup, what do you mean some kind of a
16 mixup?

17 A. Somehow, some way, arrests were made
18 but the arresting officers were either separated
19 from the prisoners or did not realize that they
20 were the arresting officers.

21 Q. How would an officer make an arrest
22 and not realize they were the arresting officer?

23 MS. WILSON: Objection to form.

24 A. It could have been assigned to them by
25 a superior officer.

0048

1 M. GALGANO

2 Q. So, Deputy Inspector Winski told you
3 you would be assigned to be the arresting
4 officer of the five arrestees?

5 A. Lieutenant Viviani came over and said
6 we would be assigned.

7 Q. He said that was Deputy Inspector
8 Winski's instruction?

9 MS. WILSON: Objection to form.

10 A. Yes.

11 Q. So, was it Lieutenant Viviani who
12 assigned you these five arrestees?

13 MS. WILSON: Objection to form.

14 A. He instructed me to go over to the MTA
15 bus. When I got on the MTA bus, I took the five
16 in front of me and explained I would be the
17 arresting officer for them for the evening.

18 Q. So, the first person was a Mr.
19 Sharkey?

20 A. I don't recall who the first person
21 was, no.

22 Q. One of those persons was Mr. Sharkey?

23 A. Yes.

24 Q. Who were the other four people?

25 A. At this point I couldn't recall their

0050

1 M. GALGANO

2 the nine names of plaintiffs?

3 A. Yes.

4 Q. One of those names is Joseph Sharkey,
5 correct?

6 A. Yes.

7 Q. Are any of the other names in that
8 caption persons who were assigned to you as
9 arrestees?

10 A. Not that I can recall, no.

11 Q. So, you personally did not see Mr.
12 Sharkey doing anything unlawful; is that
13 correct?

14 A. Yes.

15 MS. WILSON: Objection to form.

16 Q. When you saw Mr. Sharkey on the bus,
17 what was he doing?

18 A. He was seated.

19 Q. He was sitting?

20 A. Yes.

21 Q. Was he doing anything else?

22 A. No.

23 Q. After you explained that you would be
24 the arresting officer, what was the next thing
25 that happened?

0051

1 M. GALGANO

2 A. The bus left Zuccotti Park and we were
3 told we were being removed to Midtown South
4 Precinct Stationhouse to process the arrests.

5 Q. Is that where you went?

6 A. Yes.

7 Q. What did you do when you got back to
8 your precinct?

9 MS. WILSON: Objection to form.

10 You can answer.

11 A. What did we do? We waited on the bus
12 for the order to offload the prisoners and take
13 them to the stationhouse.

14 Q. How long did you wait on the bus?

15 A. I don't recall.

16 Q. Was it more than an hour?

17 A. No.

18 Q. Was it more than a half hour?

19 A. It was about a half hour.

20 Q. Did you then unload the prisoners into
21 the precinct?

22 A. Yes.

23 Q. You were specifically responsible for
24 five arrestees?

25 A. Yes.

0053

1 M. GALGANO

2 Q. So, was the last time that you saw Mr.
3 Sharkey when you placed him in a cell?

4 A. Yes, and then when I removed him from
5 the cell to have him transported to Central
6 Booking.

7 Q. You removed him from the cell and what
8 did you do then?

9 A. Took him from the desk and informed
10 him that he was going to be taken down to
11 Central Booking, the officer who was in charge
12 of the wagon would take him and the other
13 prisoners that were ready to be lodged in
14 Central Booking down to Central Booking.

15 Q. At any time that night did you speak
16 to somebody from the New York County District
17 Attorney's Office?

18 A. When we were done with all of the
19 arrest processing, we did relocate down to the
20 ADA's office, yes.

21 Q. You went to the DA's office?

22 A. Yes.

23 Q. After the pedigree form was there
24 other paperwork that you filled out?

25 A. Yes.

0054

1 M. GALGANO

2 Q. What paperwork was that?

3 A. Online Booking Arrest Worksheet.

4 Q. Anything else?

5 A. That is it.

6 Q. Did you fill out a DAT Investigation
7 Form?

8 A. I believe we did.

9 Q. So, you filled out the Online Booking
10 Sheet and the DAT Investigation Form?

11 A. Yes.

12 Q. Were there any other documents that
13 you filled out that night?

14 A. That is it that I can recall.

15 Q. Did you make any scratch notes?

16 A. Just what is inside my memo book.

17 MS. HEINEGG: I will call for
18 production of any of these documents that
19 have not been previously produced.

20 MS. WILSON: Please put it in
21 writing.

22 Q. You stated that you met with a member
23 of the District Attorney's Office?

24 A. Yes.

25 Q. Who did you meet with?

0055

1 M. GALGANO

2 A. I don't recall her name.

3 Q. It was a woman?

4 A. Yes.

5 Q. Do you remember her approximate age?

6 A. No.

7 Q. Do you remember her race?

8 A. No.

9 Q. Do you remember any physical
10 characteristics about her?

11 A. No.

12 Q. What was the substance of your
13 conversation with the Assistant District
14 Attorney?

15 A. We described the effects -- we
16 described what went on in Zuccotti Park and how
17 we made the arrests.

18 Q. Were your statements recorded in any
19 way?

20 A. No -- well, an affidavit was typed up
21 based on what was said.

22 Q. Who typed up affidavit?

23 A. DA's office.

24 Q. You reviewed this affidavit?

25 A. Yes.

0056

1 M. GALGANO

2 Q. You signed it?

3 A. No.

4 Q. Why didn't you sign it?

5 A. Apparently there was a meeting among
6 the DA's and they said they were not going to go
7 any further with the arrest, that they were
8 going to decline prosecution.

9 Q. Did you prepare any other paperwork
10 related to that night?

11 A. No.

12 MS. WILSON: Objection to form.

13 Q. Did you speak with any superiors about
14 the events of March 17, 2012 after that night?

15 A. After that night, no.

16 Q. Did you speak with any other fellow
17 officers about the events of March 17, 2013
18 after that night?

19 A. No.

20 Q. When you filled out the Online Booking
21 Arrest Sheet, how did you decide what to write
22 in that sheet?

23 MS. WILSON: Objection to form.

24 A. I conferred with a member of the NYPD
25 legal division.

0057

1 M. GALGANO

2 Q. Who was that member of the legal
3 division?

4 A. I do not have his name.

5 Q. Do you know his rank?

6 A. No.

7 Q. That member of the legal division told
8 you what to write on the Online Booking Sheet?

9 A. Yes.

10 Q. Did you consult with any of the other
11 officers from Manhattan South Task Force about
12 what you were writing?

13 A. No.

14 Q. Was any of what you wrote dictated to
15 you?

16 A. Dictated?

17 Q. Meaning did the officer tell you or
18 rather did the member of the legal division tell
19 you word for word what to write down?

20 A. Yes.

21 Q. Was any of what you wrote down copied
22 from another piece of paper?

23 A. I don't recall.

24 Q. Did the person from the legal division
25 review what you had written?

0058

1 M. GALGANO

2 A. No.

3 Q. Did anybody else review what you had
4 written?

5 A. No.

6 Q. When you spoke to the ADA later on I
7 guess the morning of March 18, 2012, what did
8 you tell that person about Joseph Sharkey?

9 MS. WILSON: I am going to instruct
10 the witness not to answer because I
11 believe this falls into privileged
12 category.

13 MS. HEINEGG: The DA is not his
14 attorney.

15 MS. WILSON: You can tell, You can
16 say what you told --

17 A. You are going to have to ask that
18 question --

19 MS. WILSON: -- told the DA'S
20 office about Sharkey, about Mr. Sharkey.

21 A. There was nothing to tell. The same
22 story applies that has already been given, we
23 were told we were being assigned arrests from
24 inside Zuccotti Park, I went on the New York
25 City MTA bus, I took the first 5 prisoners that

0059

1 M. GALGANO

2 was there, Mr. Sharkey was one of them, that is
3 the extent of the conversation other than that
4 warnings were read twice by representatives of
5 Brookfield Properties, two representatives of
6 the NYPD through a bullhorn, that was pretty
7 much the extent of it that I can recall.

8 Q. Have you ever given any other
9 testimony related to this incident?

10 A. No.

11 Q. Have you received any special training
12 for making mass arrests or mass arrest
13 processing?

14 A. Yes.

15 Q. What training have you received?

16 A. Once I was assigned to Manhattan South
17 Task Force and periodically throughout my career
18 there we were instructed to do lines, wedges and
19 have proper treatment and cuffing of mass
20 arrests.

21 Q. Was this training from the Disorder
22 Control Unit?

23 A. Yes.

24 Q. Was all of the training from the
25 Disorder Control Unit or did you have training